S.B.Civil Writ Petition NO.1518/1998

Prakash Netra

vs

State of Rajasthan & Ors.

DATE OF ORDER : - 20.1.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. J.P.Joshi, for the petitioner.
Mr. Pankaj Bohar for Mr.Ravi Bhansali, for the respondent
Mr. Shyam Ladrecha, Addl.GA, for the respondent-State

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Heard learned counsel for the parties.

Brief facts of the case are that a mining lease was granted to one M/s. Ansari Brothers Garnet Worksvide Government's order dated 8th May, 1980 and lease was executed on 1st Sept, 1980 and it was registered on 14th Oct., 1981. The lease of the said firm was determined vide State Government's order dated 6th July, 1984 on the ground that petitioner failed to remedy the breaches, which the firm committed and for which notice was served upon the said firm. The petitioner aggrieved against the above cancellation of lease, preferred a revision petition, which was registered as revision petition no.1(663)84-MIV. The said revision petition was decided by the revisional authority vide order dated 16th

July, 1987 with a direction to the State Government to pass a fresh order on merits after examining the issue of partnership to determine whether the non-petitioner's firm exists and have any right over the lease land. The revisional authority also specifically directed that the parties should also be given opportunity to present their case and, thereafter, fresh order may be passed by the State Government.

In pursuance of the above order of the revisional court dated 16th July, 1987, the State Government has passed the order on 14th July, 1997, copy of which is placed in this writ petition as Annex.11. The State Government after holding that the said firm is still in existence and is running firm and thereafter, by order dated 21st April, 1997 set aside the lease,which was granted to the petitioner vide order dated 14.2.1985 and granted lease in favour of M/s.Ansari Brothers Garnet Works non-petitioner's firm.

The petitioner is aggrieved against the order of the State Government dated 14th July, 1997 and 21st April, 1997.

The reply has been filed by the respondents no.1 and 2.

Heard learned counsel for the parties.

Learned counsel for the petitioner submits that there were two firms. One was constituted and got registered w.e.f. 1.1.79, the name of firm is Ansari Brothers Garnet Works. Copy of the registration certificate of the said firm is placed on record as Annex.4. Another firm is Ansari & Brothers Garnet Works, which was constituted w.e.f. 11th August, 1986 (Annex.9). The first firm had two partners whereas second firm had three partners. It is also submitted that the firm, which preferred the revision petition was dissolved and even decree was passed by the court of Civil Judge, Tonk on 29th March, 1985.

According to learned counsel for the petitioner, in view of the above facts and in view of the facts that the State Government has not conducted the complete enquiry about the existence of the firm rather the State Government has not even looked into the fact about the actual registration certificates of the alleged lessee firm as there are two firms having identical names. According to learned counsel for the petitioner, the State Government even went to the extent of holding that lease was granted in favour of firm, which was registered in the year 1981 though the lease is from before 1981, which is clear from the second registration certificate placed on record. It is also submitted that the order is non-speaking order and has been passed without affording opportunity of hearing to the petitioner.

Learned counsel for the private respondents submits that after the order of the State Government dated 14th May, 1997, the State Government passed the order on 21st April, 1997 and restored the mine of the Ansari Brothers Garnets Works and the said firm has already paid all dues.

I considered the submissions of learned counsel for the parties and perused the record. It is clear from the facts mentioned above, as well as is apparent from the order dated 14th May, 1997 that the respondents have not given any opportunity to the parties to prove their claim. It appears that the entire order has been passed on the basis of report, which the State Government received from the Registrar (Firms) and from the Law Department. So far as the coming into existence of the firm is concerned, that could have been certified by Registrar (Firms). The Registrar (Firms) may not have any record of the firm's discontinuance. The law department nowhere comes in picture so far as question of deciding the factual aspect of running of the firm to which lease was granted by the State Government. It appears that both the reasons in the order dated 14th May, 1997 are irrelevant for the purpose of deciding the issue, which was referred by the State Government for decision.

In view of the above, the writ petition deserves to be allowed

hence allowed. The order dated 14th May, 1997 and the consequential order dated 11th April, 1997 are set aside and the State Government may decide the issue referred to the State Government afresh after giving opportunity of hearing to the parties in pursuance of the order of the revisional authority dated 16th July, 1987. It will be relevant to mention here that this court passed the interim order on 15th July, 1998 to maintain the status-quo as it was existing on that day. In view of the above, the position, which is continuing shall not be disturbed till the issue is decided and a fresh decision is taken by the State Government.

(Prakash Tatia), J.

c.p.goyal/-